

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

EXCLUSIVE IMAGE
17865 Skypark Circle, Suite H
Irvine, CA 92614

Employer

Docket No. 00-R3D1-4346

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Exclusive Image (Employer).

JURISDICTION

On October 31, 2000, a representative of the Division of Occupational Safety and Health (the Division) conducted an inspection at a place of employment maintained by Employer at 17865 Skypark Circle, #H, Irvine, California.

On November 3, 2000, the Division issued a citation to Employer alleging seven general violations and one regulatory violation of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed civil penalties totaling \$1,045 for the alleged violations.

Employer initiated an appeal with the Board on November 27, 2000 and submitted appeal forms on December 15, 2000.

On September 21, 2001, Employer failed to appear at a duly scheduled hearing.

On February 14, 2002, the Board sent to Employer by certified mail, return receipt requested, a "Notice of Intent to Dismiss Appeals." The notice gave Employer 10 days to provide the Board with a statement containing sufficient facts to show that Employer's failure to appear at the hearing was

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

reasonable and for good cause. The Notice was received by Employer on February 19, 2002. No statement was received by the Board.

On May 29, 2002, the Board issued an “Order Dismissing Appeal.”

On December 22, 2003, Employer filed a petition for reconsideration with the Board stating that Todd Gibb, an operator at the time, was severely ill on September 21, 2001 and could not attend the hearing².

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an Administrative Law Judge’s (ALJ) decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party . . . may petition the appeals board for reconsideration Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that “[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board.” (§ 390(a).)

In the present case, the order dismissing appeal was served by mail on the parties on May 29, 2002. Because the order was served by mail, the time for filing a petition was extended by 5 days. (See § 348(a).) Thus, the last day to file a petition for reconsideration challenging the order was July 3, 2002, which was 35 days after service of the order. The petition for reconsideration filed by Employer *over eighteen months later* on December 22, 2003, was well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639, Denial of Petition for Reconsideration (May 13, 1993))

² The Board notes that the appeal was filed on behalf of Employer by another person, Jim Heath. The petition makes no statement regarding his unavailability or inability to have appeared at the noticed hearing.

citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220, Denial of Petition for Reconsideration (Mar. 16, 1995) and *Edwin D. Chapman*, Cal/OSHA App. 81-331, Denial of Petition for Reconsideration (Oct. 1, 1981).)

Petitions for reconsideration filed with this Board must comply with section 390.3(a) which states: “[i]f within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board’s own motion, the order or decision is a *final order* of the Appeals Board and not subject to review by any court or agency.” (Italics added.)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. See *Humbert v. Castro Valley County Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.)

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued May 29, 2002. Accordingly, the order dismissing appeal is final and not subject to review by any court or agency.

DECISION

Based upon the above, the petition for reconsideration is denied as untimely. The Board does not have jurisdiction to re-open the now final Order Dismissing Appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O’HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: February 13, 2004